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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,323	03/11/2004	Jessica G. Chiu	5618P3784	1769
8791 7590 10/14/2008 BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
EXAMINER				
SCHELL, LAURA C				
ART UNIT		PAPER NUMBER		
3767				
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10/14/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/800,323

**Applicant(s)**

CHIU ET AL.

**Examiner**

LAURA C. SCHELL

**Art Unit**

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 61-68 and 79-83 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 61-68 and 79-83 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 61-66, 68, 79-83 are rejected under 35 U.S.C. 102(b) as being anticipated by Sahota (US Patent No. 6,015,402). Sahota discloses a method comprising: advancing a cannula percutaneously through a blood vessel to a region of interest (Figs. 2, 8 and 9 for example), the cannula having a proximal end (near 20), a distal end (the entire region of the cannula in Figs. 8 and 9 where the balloons are attached) and an exterior surface at or adjacent the distal end of the cannula axially coupled to a balloon (Figs. 8 and 9 disclose 4 balloons attached to the surface of the cannula, the examiner is interpreting the balloon in the claim to be the second balloon from the right of 36, i.e. the third balloon from the left of 34), inflating the balloon from a first diameter to a different second diameter that is at least equivalent to an inner diameter of a blood vessel to occlude the blood vessel at the region of interest (Figs. 2, 8 and 9); infusing a treatment agent to the region of interest distal to the balloon during the occlusion of the blood vessel (Figs. 8 and 9 disclose that apertures 52/56 to the right of balloon 54 are used for infusing a treatment agent during the occlusion of the blood vessel. Also see col. 9, lines 13-42); perfusing blood flow between a location in the

blood vessel proximal to the balloon and the region of interest distal to the balloon (perfusion ports 34 proximal to the balloon are used to perfuse blood from the area proximal to the balloon through to exit perfusion ports 36 distal to the balloon; see col. 9, lines 13-42).

In reference to claim 62, Sahota discloses perfusing blood via a lumen extending through the cannula from a location proximal to the balloon to a location distal to the balloon, via a proximal hole through the exterior surface of the cannula (34) and to the lumen at a location proximal to the balloon, and a distal hole through the exterior surface of the cannula (36) and to the lumen at a location distal to the balloon (Figs. 8 and 9; col. 9, lines 13-42).

In reference to claim 63, Sahota discloses that inflating includes inflating the balloon for a first period of time to occlude the blood vessel for the first period of time and perfusing includes deflating the balloon for a second period of time; and at least one more repetition of inflating, infusing and deflating (Figs. 2, 8 and 9; col. 9, lines 13-42).

In reference to claim 64, Sahota discloses retracting back a guidewire (60) disposed through a guidewire lumen extending from the proximal end to the distal end of the cannula and exiting an opening in the cannula distal to a balloon, for a first period of time; wherein retracting a distal end of the guidewire from a location distal to at least one hole from the guidewire lumen through the exterior surface of the cannula and proximal to the balloon to a location proximal to the at least one hole to cause perfusion through the at least one hole (Figs. 8 and 9; col. 9, lines 13-42).

In reference to claim 65, Sahota discloses advancing the guidewire to a location distal to the at least one hole to prohibit a blood perfusion between a location in the blood vessel proximal to the balloon and the region of interest, for a second period of time and repeating infusion, retracting and advancing at least once more (Figs. 8 and 9, col. 9, lines 13-42).

In reference to claim 66, Sahota discloses retracting a distal end of the guidewire to control an amount of a blood perfusion between a location in the blood vessel proximal to the balloon and the region of interest by adjusting the guidewire to extend or retract a distal end of the guidewire to a location amongst a plurality of the at least one hole to allow a blood to perfuse between the holes and the lumen at a selected perfusion rate (Figs. 8 and 9; col. 9, lines 13-42).

In reference to claim 68, Sahota discloses increasing an axial length of the balloon (Figs. 8 and 9; balloon increases in length during inflation); maintaining the inflation pressure on the inner diameter of the blood vessel (Figs. 2, 8 and 9; col. 9, lines 13-42).

In reference to claims 79 and 80, Sahota discloses perfusing comprises perfusing the blood vessel coupled by human vasculature to a beating heart and the beating heart being located in a human having a beating heart (Figs. 2, 8 and 9; col. 9, lines 13-42).

In reference to claim 81, Sahota discloses perfusing blood via a lumen extending through the cannula from a location proximal to the balloon to a location distal to the balloon, via a proximal hole (34) through the exterior surface of the cannula and to the

lumen at a location proximal to the balloon, and a distal hole (36) through the exterior surface of the cannula and to the lumen at a location distal to the balloon (Figs. 8 and 9; col. 9, lines 13-42).

In reference to claim 82, Sahota discloses perfusing a blood flow from a location in the blood vessel proximal to the balloon (34) to a location in the region of interest distal to the balloon (52/56; col. 9, lines 13-42).

In reference to claim 83, Sahota discloses retracting a distal end of the guidewire to the location proximal to the at least one hole proximal to the balloon to allow the perfusion (Figs. 8 and 9; col. 9, lines 13-42).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sahota (US Patent No. 6,015,402) in view of Alt (US Patent No. 6,805,860). Sahota discloses the method substantially as claimed except for the infusing of progenitor cells. Alt, however, discloses a method of infusing progenitor cells (Fig. 1 and col. 13, lines 27-31). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Peacock with the step of infusing progenitor cells, as taught by Alt, in order to provide a method of treating a wider spectrum of diseases.

### ***Response to Arguments***

Applicant's arguments with respect to claims 61-68, 79-83 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA C. SCHELL whose telephone number is (571)272-7881. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura C Schell/  
Examiner, Art Unit 3767  
/Kevin C. Simons/



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Supervisory Patent Examiner, Art Unit 3767